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13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF MONTANA**
15 **GREAT FALLS DIVISION**

16 **STATE OF CALIFORNIA; STATE**
17 **OF NEW MEXICO; STATE OF NEW**
18 **YORK; and STATE OF**
WASHINGTON,

19 Plaintiffs,

20 **v.**

21 **RYAN ZINKE**, in his official capacity as
Secretary of the Interior; **UNITED**
22 **STATES BUREAU OF LAND**
23 **MANAGEMENT; and UNITED**
24 **STATES DEPARTMENT OF THE**
INTERIOR,

25 Defendants.

Case No. CV 17-30-BMM [Lead]

Consolidated with:

Case No. CV 17-42-BMM

**STATE PLAINTIFFS' REQUEST
FOR JUDICIAL NOTICE IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

1 State Plaintiffs hereby request that the Court take judicial notice, pursuant to
2 Rule 201 of the Federal Rules of Evidence, of a February 14, 2019 press release
3 issued by Defendant U.S. Department of the Interior and entitled, “The War on
4 Coal is Over: Interior Announces Historic Coal Projects in Utah.” The press
5 release is attached as Exhibit A to the Declaration of George Torgun in Support of
6 State Plaintiffs’ Request for Judicial Notice (“Torgun Decl.”), filed herewith.

7 Under Federal Rule of Evidence 201, a court “must take judicial notice if a
8 party requests it and the court is supplied with the necessary information.” Fed. R.
9 Evid. 201(c)(2). A fact is appropriate for judicial notice if it is not subject to
10 reasonable dispute, in that it is capable of accurate and ready determination by
11 resort to sources whose accuracy cannot reasonably be questioned. Fed. R. Evid.
12 201(b). “The court may take judicial notice at any stage of the proceeding.” Fed.
13 R. Evid. 201(d).

14 The press release attached to the accompanying declaration constitutes a
15 public record downloaded from the website of a federal agency and has been
16 properly authenticated pursuant to Federal Rule of Evidence 901(b)(7). *See* Torgun
17 Decl., ¶ 2. Matters of public record are considered appropriate subjects of judicial
18 notice. *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001). Further, it is
19 “appropriate to take judicial notice” of information “made publicly available by
20 government entities,” or on a website where neither party disputes the authenticity
21 of the website nor the accuracy of the information displayed. *Daniels–Hall v. Nat’l*
22 *Educ. Ass’n*, 629 F.3d 992, 998-99 (9th Cir. 2010); *see also Alliance for the Wild*
23 *Rockies v. Zinke*, 265 F. Supp. 3d 1161, 1176 (D. Mont. 2017) (court may take
24 judicial notice of publically available government documents). In addition,
25 “[f]ederal courts consider records from government websites to be self-
26 authenticating” under Federal Rule of Evidence 902(5). *See Paralyzed Veterans of*
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1 *America v. McPherson*, 2008 WL 4183981, *7 (N.D. Cal. Sept. 9, 2008) (citing
2 cases).

3 The press release is relevant to Defendants’ arguments regarding State
4 Plaintiffs’ standing to bring this action, ECF No. 124 at 17-21, including whether
5 State Plaintiffs’ satisfy the injury-in-fact and causation prongs of the standing test.
6 *See National Ass’n for Gun Rights, Inc. v. Murry*, 969 F. Supp. 2d 1262, 1266 (D.
7 Mont. 2013) (court will take judicial notice of public documents that are “relevant
8 to the issues at hand”); *Sierra Club v. Tahoe Regional Planning Agency*, 2013 WL
9 3070632, *3 (E.D. Cal. June 17, 2013) (finding that “public records relevant to
10 determine Plaintiffs’ standing” are “appropriate for judicial notice”). In particular,
11 as Defendants state in the press release:

12 Through the continued approval of coal lease applications and
13 modifications, the BLM has been able to support the success of coal
14 development on federal lands – including the Alton and SUFCO coal
15 mines. Secretarial Order 3348 made these actions possible by
16 overturning the 2016 moratorium on all new coal leases on federal
17 land.

18 Torgun Decl., Exh. A at 1-2.

19 Thus, the Court should take judicial notice of the attached press release.
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1 Dated: February 20, 2019

Respectfully submitted,

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